

30.04.2024
Ct. No. 19
Sl. No.33
Cp

C.O. No. 394 of 2024

M/s. Eluru Jute Mills Private Limited
Vs.
M/s. Captivate Marketing & Services Private Limited & Anr.

Mr. Pawan Kumar Jajodia
Mr. J. K. Jajodia

... for the Petitioner.

1. The revisional application arises out of an order dated October 7, 2023, passed by the learned Judge, VIIth Bench, City Civil Court at Calcutta in Misc. Case No. 2106 of 2017. Such Misc. Case was filed in Title Execution Case No. 2 of 2015 which arises out of a judgment and decree passed in Title Suit No. 1226 of 2013.
2. By the order impugned dated October 7, 2023, the learned court rejected an application for modification of the order dated January 21, 2023. The learned court observed that there was no ambiguity in the order dated January 21, 2023. The court ascertained the area of the suit premises on the basis of the schedule of the plaint and the area occupied by the petitioner from the petition filed by the petitioner itself. Therefore, there was no need for further modification. By order dated January 21, 2023, an application under Order 39 Rule 7 of the Code of Civil Procedure was rejected by the learned court. The said application was filed by the petitioner on the strength of an order passed by the High Court in C.O. 3853 of 2017.

The petitioner filed the said application on the ground that a local inspection of the premises was necessary in order to ascertain the quantum of arrear rent and the current rent to be paid to the decree holders at the rate as available in the lease agreement.

3. On perusal of the decree, it appeared to the court that the plaintiff had prayed for recovery of possession of the suit property and Rs.8,04,848/- as arrears of rent, along with interest @ Rs.10% p.a. The measurement of the suit property as appearing from the schedule of the plaint was 11394 sq. ft. which included flat No. 4D, measuring about 2521 sq. ft. The petitioner, in the Misc. Case, claimed to be in occupation of the room measuring about 2581 sq. ft., i.e., Flat No. 4D on the 4th floor. It appeared from paragraph 5 of the petition under Order 21 Rule 97 to 101 that the petitioner claimed that he had stepped into the shoes of the judgment debtor and had become a lessee of the confirming party, i.e. M/s. New Tobacco Company Limited. In paragraph 7 of the said petition the petitioner stated that M/s. Duncan Agro Industries Pvt. Ltd. transferred the entire suit premises to the plaintiff including the leasehold right of the petitioner which the petitioner acquired from the judgment debtor.
4. From the application filed by the petitioner, it appeared to the court that the property was originally leased to the judgment debtor at a rental of Rs.445/- per month. Thereafter, the judgment debtor sub-leased the property

measuring around 2581 sq. ft. in favour of Iluru Jute Mill Pvt. Ltd. Thus, the petitioner claimed to be a lessee in respect of Flat No.4D.

5. On the above findings and on the materials available, the court observed that the measurement of the total area of the property would be available and the arrear rent could also be determined.
6. The petitioner contended that the measurement of the total area occupied by the petitioner for the purpose of determination of the money payable, in compliance of the High Court's order, would be necessary. In the facts as above, the petitioner was allowed by the learned court to calculate the arrear rent supported by an affidavit and seek orders for payment thereof or for deposit of the same in court, in case of refusal. Such calculation would be without prejudice to the rights of any of the parties in the misc. case and will be subject to the final determination of the Misc. Case, upon hearing. The said order was sought to be modified by the petitioner on the ground that what was actually leased and what was mentioned in the schedule of the plaint, differed.
7. The High Court in C.O. 3853 of 2017 directed that till the disposal of the Misc. Case No.2106 of 2017, the petitioner was required to pay the arrear as also the current rent to the decree holders/opposite parties. Such payment would be without prejudice to the rights and contentions of the parties. The direction of the learned Coordinate Bench in

no way indicates that for determination of the arrears, a reopening of the plaint case with regard to the schedule and the exact area leased out to the judgment debtor, was called for.

8. In any event, the learned Executing Court asked the petitioner to submit the petitioner's own calculation on the basis of the schedule of the plaint or as per its own understanding. With regard to the arrears, the quantum of arrears could easily be ascertained from the pleadings and the order was passed without prejudice to the rights of the parties. The final quantum would be decided at the final hearing of the misc. case.
9. Under such circumstances, I find that the application for local inspection is not in consonance with the order of the High Court at all. It was only to delay the proceeding. The order impugned does not call for any interference.
10. The learned court had directed in the order dated January 21, 2023, that the petitioner should submit a calculation supported by an affidavit for necessary orders for payment of the arrears and current rent amount, in terms of the lease agreement or deposit the same in court in case of refusal. Thus, the petitioner was given the opportunity by the court to make its calculation and seek orders from the court accordingly. Such order was not complied with. The order of the High Court has also not been complied with. Instead, a frivolous application had been filed.

11. The specific direction of the court was that the calculation would be without prejudice to the rights of the parties and would be subject to final determination in the Misc. Case. Thus, no loss or injury would be faced by the petitioner even if there are differences with the measurement of the property.
12. The revisional application is accordingly dismissed. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)